

United States District Court

EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA

vs.

MARCUS GAINES PRUITT (4)

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Case No. 4:02cr88
(Judge Schell)

REPORT AND RECOMMENDATION **OF UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the request for revocation of Defendant's supervised release. After the District Judge referred the matter to this Court for a report and recommendation, the Court conducted a hearing on July 12, 2010, to determine whether Defendant violated his supervised release. Defendant was represented by Robert Arrambide. The Government was represented by Heather Rattan.

On July 1, 2003, Defendant was sentenced by the Honorable Paul Brown to sixty (60) months' custody followed by four (4) years of supervised release for the offense of Conspiracy to Manufacture, Distribute, Possess, Dispense Cocaine Base(Crack)/Marijuana. On February 24, 2006, Defendant completed his period of imprisonment and began service of his supervised term. On January 28, 2007, Defendant's supervised release was revoked and Defendant was sentenced to six (6) months' custody followed by forty-two (42) months of supervised release. On April 3, 2007, Defendant completed his second period of imprisonment and began service of his new supervised term.

On June 21, 2010, the U.S. Pretrial Services Officer executed a Petition for Warrant for Offender Under Supervision. The petition asserted that Defendant violated the following mandatory conditions: (1) the defendant shall not commit another federal, state, or local crime (two allegations); and (2) the defendant shall refrain from any unlawful use of a controlled substance. The petition also alleged violations of the following standard conditions: (1) the defendant shall refrain from excessive

use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance, or any paraphernalia related to any controlled substances, except as prescribed by a physician (three allegations). The petition asserted that Defendant violated the following special conditions: (1) the defendant shall abstain from alcohol and all other intoxicants during the term of supervision; and (2) the defendant shall participate in a program of testing and treatment for drug and alcohol abuse, under the guidance and direction of the U.S. Probation Office, until such time as the defendant is released from the program by the probation officer.

The petition alleges that Defendant committed the following acts: (1) On or about June 3, 2010, Defendant was arrested by the Sherman, Texas, Police Department and charged with driving while license suspended. While conducting a routine search of the vehicle Defendant was driving, marijuana residue was located in the center console. Defendant subsequently posted a \$1,500 bond and was released on the same date. This charge is still pending in state court; (2) On or about November 17, 2007, Defendant was arrested by the Van Alstyne, Texas, Police Department and charged with driving while intoxicated. Defendant was convicted of this offense on June 2, 2009, in Grayson County Court at Law No. 2 and sentenced to eighteen (18) months' supervised probation; (3) On April 21, 2010, Defendant submitted a breath sample for testing to the U.S. Probation Office, after being observed operating a motor vehicle, that exhibited a breath alcohol concentration of 0.148; (4) Defendant failed to submit a urine specimen for testing at Pillar Counseling on November 7 and December 19, 2009, as well as March 31 and April 21, 2010, at Wilson N. Jones Workmed; (5) On April 16 and 23, 2010, Defendant failed to attend scheduled substance abuse counseling sessions at Pillar Counseling; and (6) On May 7 and December 14, 2009, Defendant submitted a urine specimen that tested positive for marijuana and Defendant admitted to said use.

Prior to the Government putting on its case, Defendant entered a plea of true to all of the

violations. The Court recommends that Defendant's supervised release be revoked.

RECOMMENDATION

The Court recommends that the District Judge revoke Defendant's supervised release. The Court recommends that Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of six (6) months with no supervised release to follow.

After the Court announced the recommended sentence, Defendant executed the consent to revocation of supervised release and waiver of right to be present and speak at sentencing. Defendant and the Government also waived their right to file objections.

SIGNED this 13th day of July, 2010.



AMOS L. MAZZANT
UNITED STATES MAGISTRATE JUDGE